

## **REMARKS**

Entry of the foregoing, reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 112, are respectfully requested in light of the remarks which follow.

### **I. Examiner Interviews**

Applicants would like to thank the Examiner for the interviews with Applicants' representative on February 7 and February 13, 2008, regarding the outstanding objections and rejections related to allegedly improper incorporation by reference. The Examiner's helpful comments and suggestions are greatly appreciated.

During the interviews, amendments to the specification to properly incorporate essential material were discussed. In particular, the Examiner agreed that amending the specification to incorporate U.S. Patent No. 7,253,143 B1 should be sufficient to overcome the objections and rejections related to incorporation by reference.

### **II. Amendments to the Specification**

By the foregoing amendments to the specification, the specification has been amended as suggested by the Examiner. In particular, the specification has been amended by replacing reference to "WO 00/01730" with reference to "U.S. Patent No. 7,253,143 B1" at page 10. The specification has been further amended to express a clear intent to incorporate by reference by using the phrase "hereby incorporated by reference."

U.S. Patent No. 7,253,143 B1 issued from U.S. Application No. 09/743,107. The '107 application was a national stage entry of PCT Application No. PCT/SE99/01230, which published as WO 00/01730. The disclosure of the '107 U.S. patent is thus the same as the

disclosure of the '730 WO publication. Accordingly, the material incorporated by reference to the U.S. patent is the same as the material previously incorporated by reference to the WO publication. Furthermore, the application as filed clearly conveyed an intent to incorporate the material by reference. Therefore, the amendment contains no new matter. (*See* 37 C.F.R. § 1.57(g) and MPEP § 608.01(p).)

Finally, the specification has been amended to cancel the paragraph inserted at page 10 of the specification in the Reply filed September 4, 2007.

### **III. Amendments to the Claims**

By the foregoing amendments to the claims, claim 23 has been amended and new claim 28 has been added.

Claim 23 has been amended to recite that the peptide derived from amino acid 12 to amino acid 40 of human lactoferrin comprises the consensus sequence <sup>20</sup>Cys-Phe-X<sub>1</sub>-X<sub>2</sub>-X<sub>3</sub>-X<sub>4</sub>-X<sub>5</sub>-X<sub>6</sub>-X<sub>7</sub>-Lys-Val-Arg<sup>31</sup> (SEQ ID NO: 99), where X<sub>1</sub> is Gln or Ala; X<sub>2</sub> is Trp or Leu; X<sub>3</sub> is Gln, Lys, Orn, Ala, or Nle; X<sub>4</sub> is Arg, Lys, Ala; X<sub>5</sub> is Asn, Orn, Ala, or Nle; X<sub>6</sub> is Met or Leu; and X<sub>7</sub> is Arg or Lys; and that the peptide is selected from the group consisting of SEQ ID NOS: 2-5, 8, 31-37, 47, 49, 51, 63, 65, 67, 70, 72-74, 80-83, 87-96 and 97.

The amendments to the claims are supported throughout the disclosure of U.S. Patent No. 7,253,143, incorporated by reference in the present specification. In particular, claim 23 recites the peptides recited in claim 1 of the '143 patent. Claim 28 recites an embodiment of the invention recited in claim 23.

The amendments to the claims have been made without prejudice or disclaimer to any subject matter recited or canceled herein. Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new

matter has been added, and entry of the foregoing amendments of the above-identified application are respectfully requested.

#### **IV. Response to Objections to the Specification**

The specification has been objected to because it contains a sequence disclosure at page 10, lines 11-12. Furthermore, the amendment filed September 4, 2007 was objected to for purportedly introducing new matter into the disclosure.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's objection, the specification has been amended as described above. In particular, the paragraph added at page 10 of the specification has been deleted, and the specification has also been amended to refer to U.S. Patent No. 7,253,143 rather than the corresponding WO publication. Accordingly, the objections to the specification are moot.

#### **V. Response to Rejections Under 35 U.S.C. § 102**

Claims 4-10 and 23-25 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Reuben et al. (U.S. Patent Application Publication No. 2002/0072596).

This rejection is respectfully traversed.

It is well established that for prior art to be anticipatory, every element of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *See, e.g., Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 213 U.S.P.Q. 81, 90 (Fed. Cir. 1986). Applicants submit that Reuben et al. fails to satisfy this requirement, for at least the following reasons.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, the claims have been amended as described above. In particular, claim

23 has been amended to recite particular peptides derived from lactoferrin. Applicants submit that the cited reference fails to teach or even suggest the peptide derivatives recited in the present claims, much less that the derivatives might be useful for reduction of adhesion formation.

In view of the above, Applicants respectfully request reconsideration and withdrawal of this rejection.

**VI. Response to Rejections Under 35 U.S.C. § 112, First Paragraph**

Claims 4-10 and 23-25 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement.

Specifically, the Examiner has stated that essential material cannot be incorporated by reference to a WO publication.

As noted above, the specification has been amended to incorporate the essential material by reference to the corresponding U.S. patent, in accordance with 37 C.F.R. § 1.57. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

**VII. Response to Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 4-10 and 23-25 have been rejected under 35 U.S.C. 112, second paragraph, as purportedly indefinite.

Specifically, the Examiner has indicated that it is not clear what peptides are meant by the phrase "a peptide derived from amino acid 12 to amino acid 40 of human lactoferrin."

As noted above, the claims have been amended to more explicitly recite the lactoferrin derivatives. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

**CONCLUSION**

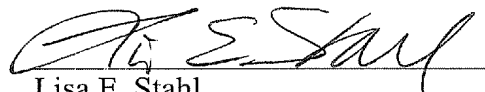
In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited. In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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